IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.312 OF 1983

Bank of India ....Plaintiff
V/s.
M/s.Kay Gee Textiles & Ors. ....Defendants

Mr.N.S. Fadia with Mr.C.D. Patel for the Plaintiff.
None for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 25TH AUGUST, 2006.

P.C. :

1. This is a usual bank suit to recover the amounts due under the cash credit facility granted by the Plaintiff to Defendant No.1.

2. Defendant Nos.2 and 3 are the partners of Defendant No.1. Defendant No.4 is the guarantor and executed a guarantee dated 2.3.1976.

3. The Plaintiff has tendered an affidavit of one S.N. Sharma, Manager of the Plaintiff in lieu of oral evidence.

4. An ex-parte decree had been passed against Defendant Nos.3 and 4 on 2.11.1996. At the time of

passing the ex-parte decree, the original documents were tendered and received in evidence. The same are tendered and received in evidence today as well. The Defendants are absent. There is no objection to the same.

5. The affidavit in lieu of the oral evidence sets out in detail the manner in which the cash credit facility was granted and the documents which were executed in respect thereof. These are the usual documents which are executed in connection with a cash credit facility including the letter of lien and set off, agreement of hypothecation, declaration and the undertakings.

6. The main defence is that the aforesaid documents were executed in blank. The case is not supported either by any evidence on record or even by any circumstantial evidence. As stated above the Defendants remained absent. The documents were admittedly executed by the Defendants. The onus was on them to establish that the documents were executed in blank. Even if the same was established, they would however have to establish by reason thereof that there is no liability on them to pay. The fact that the amounts were advanced is not denied and cannot

seriously be disputed. The documents including the letters dated 13.4.1977, 10.7.1978, 5.9.1979 and 14.6.1982 establishp that the Defendants have in fact admitted the amounts.

7. In the circumstances, the suit is decreed as against Defendant Nos.1 and 2 as prayed.

8. The Suit is accordingly disposed of.